

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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In re
Tyrone Noel Nunn

Case No. 2:24-cv-01242-CDS-EJY

ORDER

Plaintiff, incarcerated in the Nevada Department of Corrections, initiated this action with a document titled “1st Amended Complaint, Petition for Writ of Habeas Corpus, Request for Evidentiary Hearing, Motion for *In Forma Pauperis*, and Article 440 Motion.” ECF No. 1-1. Plaintiff subsequently filed an application to proceed *in forma pauperis* in which he checked boxes to initiate a civil rights complaint under 42 U.S.C. § 1983 and a petition for writ of habeas corpus. ECF No. 3. Plaintiff included with this filing a financial certificate where he checked the box for a civil rights complaint. *Id.* Separately, Plaintiff filed a document stating he is seeking \$90,000 in damages. ECF No. 4.

The Court does not know whether Plaintiff is attempting to bring a civil rights complaint under 42 U.S.C. § 1983 or a petition for writ of habeas corpus. Plaintiff cannot pursue both types of claims in the same case. *See Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir. 2016) (reiterating that “habeas is the exclusive vehicle for claims brought by state prisoners that fall within the core of habeas, and such claims may not be brought in a § 1983 action”); *Wilkinson v. Dotson*, 544 U.S. 74, 81–82 (2005) (holding that “a state prisoner’s § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner’s suit (state conduct leading to conviction or internal prison proceedings)—if success in that action would necessarily demonstrate the invalidity of confinement or its duration”). Plaintiff may pursue a § 1983 action *or* a habeas corpus petition in this case but not both.

Accordingly, IT IS HEREBY ORDERED that no later than **September 13, 2024**, Plaintiff must file a notice indicating whether he seeks to initiate a civil rights case under 42 U.S.C. § 1983 or relief through a habeas corpus petition.

1 IT IS FURTHER ORDERED that failure to file a notice indicating what type of action
2 Plaintiff is trying to initiate will result in a recommendation to dismiss this action **without prejudice**.
3 A dismissal without prejudice allows Plaintiff to file his case with the Court under a new case number
4 when he is able to state the type of case that he is trying to bring.

5 Dated this 26th day of August, 2024.

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7 ELAYNA J. YOUCHAK
8 UNITED STATES MAGISTRATE JUDGE
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